

## **OPTION AGREEMENT**

THIS OPTION AGREEMENT (this "Agreement") is made and entered into as of the 29<sup>th</sup> day of February, 2000, by and between SouthLake Properties, an Alabama general partnership ("Seller") and ATA Services, Inc., a Delaware corporation ("Buyer").

### **WITNESSETH:**

WHEREAS, Seller and Buyer are parties to a certain General Sales Contract, dated December 13, 1999, as amended, modified and supplemented by an Addendum, dated December 13, 1999, and a Second Addendum, dated February 11, 2000 (collectively, the "Sales Contract"), providing for (i) the sale by Seller and the purchase by Buyer of Lot 1, according to Plat or Map of the ATA Services Addition to SouthLake, as recorded in Map Book 26, Page 115, of the official records of the Judge of Probate of Shelby County, Alabama (said subdivision is sometimes referred to herein as the "Addition"); and (ii) a grant by Seller to Buyer of exclusive and irrevocable options (the "Option(s)") to purchase Lot 2 and/or Lot 3 of the Addition;

WHEREAS, Seller is the owner of Lots 2 and 3 of the Addition (also collectively referred to herein as the "Option Property");

WHEREAS, Buyer and Seller desire to set forth in this Agreement that is to be publicly recorded the terms and conditions upon which Buyer may purchase the Option Property in the event that Buyer exercises its Option(s).

NOW, THEREFORE, in consideration of the closing of the sale and purchase of Lot 1 of the Addition in accordance with the terms and conditions of the Sales Contract, and other good and valuable consideration, the receipt and sufficiency of which Seller hereby acknowledges, it is agreed as follows:

**Section 1. The Option(s).** Seller hereby grants to Buyer two (2) exclusive and irrevocable Options to purchase from Seller the Option Property which is specifically described as follows:

**Lots 2 and 3 According to the Survey of the ATA Services Addition to SouthLake as recorded in Map Book 26, Page 115 in the Office of the Judge of Probate of Shelby County, Alabama.**

Inst # 2000-06610

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SHELBY COUNTY JUDGE OF PROBATE

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**Section 2. Payment.** Upon its exercise of an Option, Buyer shall pay to Seller, at Closing(s) (as hereinafter defined), as consideration for Lot 2 and/or Lot 3 of the Addition, as the case may be, One Hundred Eighty-Five Thousand and 00/100 Dollars (\$185,000.00) per acre (the "Option Price").

**Section 3. Term of Option(s).** The Option(s) may be exercised by Buyer concurrently, consecutively or in the alternative at any time on or before one (1) year from the date of this Agreement (the "Option Period") by written notice delivered in accordance with Section 10 of this Agreement. At 11:59 p.m., Jefferson County, Alabama time on the last day of the Option Period, the Option(s), to the extent they have not been previously exercised by Buyer, shall automatically expire and terminate without any further action required by the parties hereto.

**Section 4. Buyer's Inspections and Investigations.**

(a) Throughout the Option Period and at all times after the exercise of the Option(s) by Buyer through the Closing Date of Buyer's purchase of Lot 2 and/or Lot 3 of the Addition, as the case may be (the "Inspection Period"), Buyer and its authorized agents, attorneys and representatives shall have the right to enter upon the Option Property and to conduct, at Buyer's sole expense, all investigations and studies which Buyer deems prudent, including without limitation, appraisals, surveys, soil, drainage, ground water and percolation tests, engineering, planning and feasibility studies, environmental assessments and evaluations of the availability of utilities (collectively, the "Buyer's Inspections").

(b) Seller acknowledges that Buyer may, without limitation, at Buyer's expense, make inquiries into matters of zoning, utility availability, building codes, insurability of improvements to be located on the Option Property, and any and all other matters deemed necessary by Buyer in order to confirm the property's viability for Buyer's intended use or uses thereof.

(c) Buyer agrees to indemnify and hold Seller harmless from any claim arising from damage or injury sustained by any person or entity while conducting any of Buyer's Inspections.

**Section 5. Representations and Warranties of Seller.** Seller represents and warrants to the Buyer as follows:

(a) **Title and Authority.** Seller holds good and marketable title to the Option Property and has the full power and authority to convey the Option Property to Buyer pursuant to the terms of this Agreement.

(b) There is no pending, nor to Seller's knowledge, any threatened condemnation or similar proceeding or special assessment affecting the Option Property, or any part thereof, nor, to the knowledge of Seller, is any such proceeding or assessment contemplated by any Governmental Agency.

As used herein, the term "Governmental Agency" means the United States, the State of Alabama, Jefferson County, the City of Birmingham and any agency, department, commission, board, bureau or instrumentality of any of the foregoing.

(c) Seller is not a "foreign person" as defined in Section 6039C of the Internal Revenue Code and, at each Closing contemplated under this Agreement, Seller agrees to provide to Buyer an affidavit to that effect.

(d) Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Option Property, or any portion thereof, or any other proceedings arising out of injury or damage to the Option Property, or any portion thereof, Seller will notify Buyer of the pendency of any such proceedings.

**Section 6. Conditions to Closings.** Notwithstanding Buyer's exercise of the Option(s), Buyer's obligation to purchase the Option Property shall be subject to and dependent upon the satisfaction of each of the following conditions precedent:

(a) **Title to Property.** Buyer shall have approved the title to Lot 2 and/or Lot 3 of the Addition, as the case may be, and the related survey in accordance with Section 7 hereof.

(b) **Governmental Authorizations.** Buyer shall have obtained all applicable authorizations, permits, variances, subdivision plats, licenses and approvals by any Governmental Agency for the acquisition of the Option Property (the "Required Permits") without the imposition of any conditions unsatisfactory to Buyer.

(c) **Accuracy of Representations and Warranties.** The representations and warranties of Seller contained in this Agreement shall be true and correct on and as of the Closing Date (as hereinafter defined) with the same force and effect as though such representations and warranties had been made on the Closing Date, and Buyer shall have received from Seller a certificate to such effect.

(d) **No Breach by the Seller.** Seller shall not have breached any of the terms and conditions of this Agreement.

(e) Buyer may terminate this Agreement at any time prior to the expiration of the Inspection Period should Buyer's Inspections be unsatisfactory, in Buyer's sole discretion.

**Section 7. Title and Survey.** Upon the exercise by Buyer of the Option(s), Seller shall convey to Buyer on the Closing Date good and marketable title to Lot 2 and/or Lot 3 of the Addition, as the case may be, free and clear of all liens, mortgages and other encumbrances other than the Permitted Encumbrances (as hereinafter defined). Within ten (10) days after Buyer exercises the Option(s), Seller will deliver to Buyer a commitment for an owner's title insurance policy, Form



ALTA 1992, (the "Title Commitment") in the amount of the purchase price issued by Alabama Title Company (the "Title Company") covering Lot 2 and/or Lot 3 of the Addition, as the case may be, together with an ALTA survey (the "Survey") in such form as will enable the Title Company to remove its general survey exception from the Title Commitment.

**Section 8. Closing.** The closing of the sale contemplated by the Option(s) (the "Closing") shall be as follows:

(a) The Closing will occur within thirty (30) days after the exercise of the Option(s) by Buyer, unless such date is extended pursuant to Section 8 of this Agreement to permit the Seller to cure title or survey objections associated with the Option Property. The precise date and time of the Closing within such thirty day period will be the date and time specified by Buyer by written notice to Seller and approved by Seller (such date is hereinafter referred to as the "Closing Date"). The Closing shall occur at the offices of Hand Arendall, L.L.C. in Birmingham, Alabama or at such other place as the parties may agree upon in writing.

(b) At the Closing, Seller will deliver or cause to be delivered to Buyer a statutory warranty deed conveying Lot 2 and/or Lot 3 of the Addition, as the case may be, to Buyer, subject only to such encumbrances as are approved by Buyer (the "Permitted Encumbrances"), as well as such additional documents as may be reasonably requested by Buyer to consummate the transaction.

(c) Buyer and Seller shall share equally the costs of the closing attorney (to be mutually agreed upon by Buyer and Seller) and all other customary closing costs. Except as otherwise set forth herein, each party shall pay its own costs including its respective attorneys' fees and its respective share of all real property taxes which shall be prorated as of the Closing Date.

**Section 9. Risk of Loss.** The risk of loss for the Option Property and all improvements thereon, if any, shall remain with Seller until legal title of Lot 2 and/or Lot 3 of the Addition, as the case may be, is conveyed to, and accepted by, Buyer, by delivery and acceptance of a warranty deed pursuant to this Agreement.

**Section 10. Notice.** All notices, demands, requests or other communications required or permitted to be given to any party hereto or in connection herewith (i) must be in writing and (ii) may be served by either (A) depositing the same in the United States mail, full postage pre-paid, certified or registered with return receipt requested, (B) delivering the same in person, or (C) sending a telecopy of the same, confirmed with a copy thereof delivered either by mail or in person as provided herein. For the purpose of notice hereunder, the mailing addresses and, where applicable, the telecopier numbers of parties hereto are as follows:

If to the Buyer:      ATA Services, Inc.  
1810 Merchants Drive  
Birmingham, Alabama 35244  
Attn: Alan B. Hale  
Telecopy No. (205) 444-4827

If to the Seller:      SouthLake Properties  
100 Village Street  
Birmingham, Alabama 35242  
Telecopy No. (205) 995-9380

The parties may, from time to time and at any time, change their respective notice addresses and facsimile numbers upon the giving of ten (10) days' advance written notice to the other party of such changes.

**Section 11.    General Provisions.**

- (a)      Captions in this Agreement are for convenience only and are not intended to limit or interpret the provisions hereof.
- (b)      Time is of the essence of this Agreement and all provisions hereof.
- (c)      All of the terms, covenants and conditions hereof will be binding on and inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of the parties.
- (d)      This Agreement is the entire agreement between the parties regarding the subject matter hereof. It is specifically understood that this Agreement may be altered, amended or modified only by a writing signed by both the Buyer and the Seller.
- (e)      The representations, warranties and covenants contained in this Agreement shall not merge into the deed or deeds delivered pursuant hereto and shall survive each closing and be binding upon the parties obligated thereby.
- (f)      This Agreement shall be governed and interpreted under the laws of the State of Alabama.
- (g)      Nothing contained herein is intended to create, nor shall it ever be construed to make the Seller and the Buyer partners, joint venturers, or the agent of each other.
- (h)      Buyer shall have the right to sell, assign or transfer this Agreement without the approval of Seller; provided, however, that any sale, assignment or transfer by Buyer shall not release Buyer from any obligation under this Agreement.

(i) This Agreement shall be recorded by Buyer, at Buyer's expense, with the Office of the Judge of Probate of Shelby County, Alabama.

EXECUTED AND DELIVERED as of the date first above written.

ATA SERVICES, INC., a Delaware Corporation

By: 

Its: CEO

SOUTHLAKE PROPERTIES, an Alabama General Partnership

By: 

Its General Partner

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned Notary Public in and for said County in said State, hereby certify that Alan B. Hale whose name as Chief Executive Officer of ATA Services, Inc., a Delaware corporation, is signed to the foregoing Option Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Option Agreement, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 2 day of <sup>March</sup> February, 2000.

  
Notary Public

My commission expires: 4-2-2000

{SEAL}

STATE OF ALABAMA )

SHELBY COUNTY )

I, the undersigned Notary Public in and for said County in said State, hereby certify that HAROLD RIPPES whose name as General Partner of SouthLake Properties, an Alabama general partnership, is signed to the foregoing Option Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of this Option Agreement, he/she, as such partner and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand this 2 day of <sup>MARCH</sup> February, 2000.

  
Notary Public

My commission expires: 11-9-02

{SEAL}